

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 4, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)
Rep. Roger Koopman (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 367, HB 526, 1/25/2005
Executive Action: HB 367-Do Pass, HB 243, 307-Do Pass
As Amended

HEARING ON HB 367

Sponsor: REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on HB 367, Revise laws to reflect Justice Courts as a court of record. REP. PARKER stated that he brought this bill at the request of Cascade County's Judge Harris.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 35}

Proponents' Testimony:

Sam Harris, Justice of the Peace-Cascade County, rose in support of HB 367. He spoke to the committee about changing some of the language in current statutes to clean up some of the provisions. Judge Harris stated that there is ongoing training for judges offered through the Continuing Lawyers Education (CLE) program.

{Tape: 1; Side: A; Approx. Time Counter: 35 - 80}

John Connor, Assistant Attorney General, informed the committee that the Prosecution Bureau within the Attorney General's office does the training for Justices of the Peace judges.

{Tape: 1; Side: A; Approx. Time Counter: 80 - 111}

Ted Clack, Montana Magistrates, spoke in support of HB 367.

{Tape: 1; Side: A; Approx. Time Counter: 111 - 127}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. STOKER queried Judge Harris whether or not town courts can become a Court of Record and what equipment is needed. Judge Harris replied in the affirmative that town courts can indeed become Courts of Record and the cost would be approximately \$1,000.

REP. RICE questioned Mr. Ted Clack (Montana Magistrates) about whether or not this was a piece of "creeping legislation" and if passage of this bill would eventually lead to Justices of the Peace judges having the requirement of being attorneys. Mr. Clack stated that he has reviewed this bill and it is in his opinion, "...not the intent of this bill to do that."

{Tape: 1; Side: A; Approx. Time Counter: 127 - 180}

Closing by Sponsor:

REP. PARKER closed the hearing of HB 367 and stated that it is certainly not his intent to require Justices of the Peace judges to be attorneys.

{Tape: 1; Side: A; Approx. Time Counter: 180 - 193}

HEARING ON HB 526**Opening Statement by Sponsor:**

REP. SCOTT MENDENHALL (R), HD 77, opened the hearing on **HB 526**, Medical treatment, nutrition, and hydration to prevent death.

REP. MENDENHALL further stated that this bill would provide a patient an opportunity to sign a declaration to provide life saving measures that a physician may not override.

EXHIBIT(juh28a01)

{Tape: 1; Side: A; Approx. Time Counter: 193 - 252}

Proponents' Testimony:

Greg Trude, spoke in support of HB 526.

{Tape: 1; Side: A; Approx. Time Counter: 252 - 293}

Eric Scheidermeyer, Montana Catholic Conference, rose in support of HB 526 and stated, "...the patient should have the choice to live."

{Tape: 1; Side: A; Approx. Time Counter: 293 - 314}

Harris Himes, Montana Family Coalition, rose to support HB 526.

{Tape: 1; Side: A; Approx. Time Counter: 314 - 323}

Opponents' Testimony: None

Informational Testimony:

Anita Rossmann, Montana Advocacy Program, rose in opposition to HB 526 by saying that people with disabilities have no voice in these types of matters. **Ms. Rossmann** further stated that the advanced directives and living wills addressed in this bill are much too general and an amendment may be needed.

She related a story to the committee about an elderly disabled man; living in a group home that eventually died after a situation that would be applicable to the bill.

{Tape: 1; Side: A; Approx. Time Counter: 323 - 446}

Questions from Committee Members and Responses:

REP. BECKER asked the sponsor of HB 526 about the "five wishes" that as a nurse, she has come in contact within prior instances. She and **REP. MENDENHALL** discussed the new living wills where power of attorney is applied.

REP. NOENNIG then queried **REP. MENDENHALL** about the intent of this bill and the language in it that addresses the violation/penalty aspect of HB 526. **REP. MENDENHALL** explained that during the bill drafting process that language was added. The discussion then centered around the "unintended consequences" of HB 526.

REP. RICE spoke with **REP. MENDENHALL** about the situation where a patient's circumstances may be hopeless and the family deems it necessary to try to override the patient's wishes. She asked if there is language in the bill to address that. **REP. MENDENHALL** replied that there is language in HB 526 to designate someone to be in charge.

{Tape: 1; Side: A; Approx. Time Counter: 446 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 58}

Closing by Sponsor:

REP. MENDENHALL closed the hearing on HB 526 and stated that he would be open to an amendment that Ms. Rossmann had spoken of.

{Tape: 1; Side: B; Approx. Time Counter: 58 - 89}

EXECUTIVE ACTION ON HB 367

Motion: **REP. PARKER** moved that HB 367 DO PASS.

Discussion:

The committee discussed at length the language regarding non-attorneys presiding as judges in courts of records. **Mr.**

MacMaster was asked to explain the differences between courts of record, limited jurisdiction and "Trial DeNovo."

Vote: Motion carried unanimously by roll call vote 18-0.

(REPS. KOOPMAN, LANGE voted yes by proxy vote.)

{Tape: 1; Side: B; Approx. Time Counter: 89 - 294}

EXECUTIVE ACTION ON HB 307

Motion: REP. PARKER moved that HB 307 DO PASS.

Discussion:

Motion/Vote: REP. PARKER moved that HB 307 BE AMENDED with AMENDMENT 307-01. Motion carried unanimously by voice vote. [EXHIBIT](#)(juh28a02)

Motion: REP. PARKER moved that HB 307 DO PASS AS AMENDED.

(Please Note-REP. WILSON LEFT THE ROOM.)

Discussion:

Motion: REP. NOENNIG moved that HB 307 BE AMENDED with language "...proceeds known to be."

Motion/Vote: REP. NOENNIG then WITHDREW THE PREVIOUS AMENDMENT and moved that on Line 17 and 19, STRIKE "known to be" and INSERT "that persons that known are." Motion carried unanimously by voice vote.
(REPS. KOOPMAN, LANGE, WILSON voted yes by proxy.)

(Please Note-REP. WILSON BACK IN THE ROOM)

Motion/Vote: REP. STOKER moved that HB 307 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.
(REPS. KOOPMAN, LANGE voted yes by proxy vote.)
{Tape: 1; Side: B; Approx. Time Counter: 294 - 500}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 60}

EXECUTIVE ACTION ON HB 243

Motion: REP. NOENNIG moved that HB 243 DO PASS.

Discussion:

REP. NOENNIG explained the subcommittees recommendations regarding changing the effective date and the change in when the counties no longer are required to pay and the DOC takes over the payments.

Motion/Vote: REP. NOENNIG moved that HB 243 BE AMENDED with the subcommittees's recommendations. Motion carried unanimously by voice vote.

(REP. KOOPMAN, LANGE voted yes by proxy.)

Motion/Vote: REP. NOENNIG moved that HB 243 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

(REPS. KOOPMAN, LANGE voted yes by proxy.)

{Tape: 2; Side: A; Approx. Time Counter: 60 - 139}`

ADJOURNMENT

Adjournment: 9:40 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh28aad0.PDF](#))